

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2018

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.11652 of 2013

and

M.P.No.1 of 2013

M.K.Ponnusamy

.. Petitioner

Vs

1.The Superintendent of Police,
Namakkal District,
Namakkal.

2.M/s.The Tamil Nadu Industrial
Investment Corporation Ltd.,
Registered Office at Arul Mani
No.27, Whites Road,
Chennai - 14,
Rep.by its Managing Director.

3.The Branch Manager,
Tamil Nadu Industrial Investment,
Corporation Namakkal Branch,
No.2, Dr.Sankaran Road,
Namakkal.

4.Manohar Poultry and Cattle Feeds
Rep.by its Proprietor,
M.Elangovan.

.. Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the respondents to remove the encroachment in front of the petitioner's building in S.F.No.243/1A 50 cents along with building at Thumangkurichi Village, Karupattipalayam, Namakkal District and give police protection to the petitioner and his property on the basis of the petitioner's complaint dated 15.12.2012.

For Petitioner : Mr.A.E.Kalaiselvan

For Respondents :Mr.B.Anand
Government Advocate for R1

Mr.K.Magesh for R2 and R3
Mr.N.Manokaran for R4

O R D E R

Heard Mr.A.E.Kalaiselvan, learned counsel for the petitioner, Mr.B.Anand, learned Government Advocate for the first respondent, Mr.K.Magesh, learned counsel for the respondents 2 and 3 and Mr.N.Manokaran, learned counsel for the fourth respondent and perused the materials available on record.

2.This writ petition has been filed for issuance of a writ of mandamus, directing the respondents to remove the encroachment in front of the petitioner's building measuring an extent of 0.50 cents in S.F.No.243/1 at Thumangkurichi Village, Karupattipalayam, Namakkal District.

3. The undisputed facts of the case is that the fourth respondent had availed financial assistance from the respondents 2 and 3 by mortgaging the property in dispute. Due to default in payment of the loan amount, the respondents 2 and 3, by invoking Section 29 of the State Financial Corporation Act, brought the property for public auction and the petitioner was the successful bidder, in the auction conducted on 23.12.1993, the property was handed over to the petitioner on 27.01.1995 and a sale deed was executed in favour of the petitioner on 08.09.1995.

4. The grievance of the petitioner is that the fourth respondent has put up a hut in front of his property and the first respondent failed to remove the encroachment, despite his representation.

5. The learned counsel for the petitioner submitted that the petitioner is a lawful owner of the property and in the counter the respondents 2 and 3 admit that the petitioner was put in possession of the property, pursuant to the auction held on 23.12.1993 and hence, the encroachment made by the 4th respondent is liable to be removed.

6. The learned counsel for the fourth respondent submitted that the petitioner has instituted two suits for declaration and permanent injunction. Hence, the present writ petition is not maintainable. I am not able to agree with the submission of the learned counsel, for the reason that the petitioner is the successful bidder in the public auction conducted by the respondents 2 and 3. In disputably, the petitioner has been in possession and enjoyment of the property as an auction purchaser and the private respondent has no right to cause obstruction by putting up a hut and in my opinion, the encroachment made by the fourth respondent is to be removed forthwith.

7. In that view, the first respondent is directed to consider the representation of the petitioner dated 15.12.2012 and take appropriate action, by removing the encroachment forthwith.

8. With the above direction, this writ petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

ms

To

1.The Superintendent of Police,
Namakkal District,
Namakkal.

2.The Managing Director,
M/s.The Tamil Nadu Industrial
Investment Corporation Ltd.,
Registered Office at Arul Mani
No.27, Whites Road,
Chennai - 14.

3.The Branch Manager,
Tamil Nadu Industrial Investment,
Corporation Namakkal Branch,
No.2, Dr.Sankaran Road,
Namakkal.

+ 1 cc to Mr.K. Magesh, Advocate Sr.45200
+ 1 cc to Mr. A.E. Kalaiselvan, Advocate Sr.45122
+ 1 cc to Mr.N. Manokaran, Advocate Sr.45536
+ 1 cc to Mr. Government Pleader Sr.45764

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W.P.No.11652 of 2013
and
M.P.No.1 of 2013

CP(CO)
EU(25/07/2018)